

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 688 of 2000

in

SPECIAL CIVIL APPLICATION NO 6749 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

 2. To be referred to the Reporter or not? : NO

 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

 5. Whether it is to be circulated to the Civil Judge? : NO
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GSRTC

Versus

THAKORBHAI BHIKHBHAI PATEL

Appearance:

MR HARDIK C RAWAL for Appellants

MR Prabhakar Upadhyaya for Mr MUKESH H RATHOD
for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE D.P.BUCH

Date of decision: 08/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Admit. Mr Prabhakar Upadhyaya, learned Advocate waives service of notice of admission on behalf of respondent No.1.

Learned Advocates are heard. We have examined the record of the present Appeal. It is at the instance of the appellant-original respondent, Gujarat State Road Transport Corporation (for short, 'the GSRTC') against the judgment rendered, on 10.4.2000, by the learned Single Judge in Special Civil Application no. 6749 of 1999, inter alia, contending that the voluntary resignation tendered by the respondent-original petitioner driver of the GSRTC, was accepted and merely it was not communicated, his change of mind, culminating into withdrawal of the earlier resignation would not make any difference in law. This proposition placed before us was thread-bare examined by the learned Single Judge and it was, rightly, negatived. We have dispassionately examined the impugned judgment and we find that there is no any material worth the candle, which could prompt us to exercise our powers under Clause 15 of the Letters Patent, wherein, the jurisdictional power would circumscribe.

2. It is noticed by us from the record that the original petitioner-driver tendered his resignation on 25.1.1999 and was accepted before the end of the office hours on the same day. The next day being public holiday, the petitioner, upon reconsideration, realised and decided to withdraw his resignation before the communication of the acceptance of the same. Again on the next day i.e. on 27.1.1999, he sought withdrawal of his resignation and he was allowed to work by the appellant-original respondent for the reasons which are not known to us from the record.

3. It is an admitted fact that -

- (i) the acceptance communication was not received by the original petitioner-driver;
- (ii) nobody was posted vice him upon acceptance of the resignation;

(iii) It is not the case that a new recruit was posted and he had taken over charge as driver in place of the original petitioner;

(iv) the petitioner was working as driver and he belongs to the cadre of Class III in terms of service status.

4. The learned Single Judge has assigned reasons in paras 2 and 3 of the impugned judgment for accepting the plea of the original petitioner-driver. It is clearly and evidently articulated, while passing the order of reinstatement that the incumbent driver shall not be entitled to wages for the intervening period. It is also observed by the learned Single Judge that his orders shall not be treated as a precedent.

5. The question as to whether there was a break in service or a cessation of the relationship of "Master and Servant" necessitating the order of reinstatement, is not thought expedient by us in this case, which the learned Single Judge also had not gone into, since it was not pleaded and, therefore, not examined and same is the position before us.

6. The view which we are inclined to take at this juncture is very much reinforced by the decision of the Apex Court rendered in the case of SHAMBHU MURARI SINHA vs. PROJECT & DEVELOPMENT INDIA & ANR., reported in 2000 SCC (L & S) 741.

7. In the ultimate analysis of facts and relevant proposition of law, and after hearing the rival versions, and in absence of any statutory rule or provision about acceptance of the resignation and cessation of the contractual relationship of a "Master and Servant", we find that there is no justification for our interference, exercising powers under Clause 15 of the Letters Patent.

8. In the result, this appeal deserves the only fate of dismissal. Therefore, this appeal is dismissed at the admission stage. No order as to costs.

08.11.2000 [J N Bhatt, J.]

[D P Buch, J.]
msp.

